

## modmed synapSYS Terms

Last Updated: 19 February 2020.

### 1. Introduction.

1.1. modmed synapSYS Terms. These modmed synapSYS Terms (including the attached Exhibits, the “**modmed synapSYS Terms**”) are incorporated into and form part of each modmed synapSYS Agreement between ModMed and Company. Each modmed synapSYS Agreement sets out a commercial relationship between ModMed and Company relating to, and in addition to, Company’s use of ModMed’s API Services in respect of the SynAPPs. The “**Agreement**” is the modmed synapSYS Agreement plus these modmed synapSYS Terms.

1.2. API TOU. These modmed synapSYS Terms incorporate by reference the API Terms of Use set forth at [modmed.com/api-terms-of-use/](https://modmed.com/api-terms-of-use/) (the “**API TOU**”). The API TOU govern Company’s use of the API Services (which include the APIs). The Agreement will govern if there is any conflict between the Agreement and the API TOU. The Agreement is a “Primary Agreement” under the API TOU.

1.3. Definitions. Capitalized terms used but not defined in these modmed synapSYS Terms have the meanings in Exhibit A to these modmed synapSYS Terms or, if not defined in Exhibit A, then the meanings in the API TOU (noting Appendix 1 to the API TOU).

### 2. Common Customers.

2.1. Restrictions. All ModMed Leads and Common Customers must be within the Territory and, if applicable, in the Field.

2.2. Information. ModMed may direct ModMed Leads to submit their information to Company via Company’s website or any other means the parties may mutually agree. Company will use all information provided regarding ModMed Leads only to

solicit such ModMed Leads for the SynAPPs. Company will not share with, sell to, exchange with, or disclose to any third party such information.

2.3. Onboarding. Company will contract directly with all Common Customers, will set its own terms and conditions for sale or service including prices, and will be solely responsible for collections of amounts due to Company by Common Customers. ModMed will neither be a party to nor bound by any such contract. Company will be solely responsible for all aspects of the enrollment of ModMed Leads and the implementation of and training related to SynAPPs.

2.4. Support. Each party will be responsible for supporting its respective products and services, including Company having sole responsibility for all customer support and problem resolution for the SynAPPs. ModMed may elect in its sole discretion to provide certain initial troubleshooting and answering of questions in particular instances (i.e., certain elements of “tier 1” support) to Common Customers related to the SynAPPs, but any such support ModMed elects to provide to Common Customers will not relieve Company of its obligations with respect to the SynAPPs, including to provide customer support and problem resolution.

### 3. Coordination.

3.1. Planned Downtime. Company will provide ModMed with as much notice as possible of each planned downtime affecting a SynAPP, and no less than 7 days’ notice.

3.2. Unplanned Downtime. Company will provide ModMed with prompt notice of unplanned downtimes affecting a SynAPP, understanding that ModMed may receive support requests from Common Customers related to such downtime. Company will keep ModMed apprised of the status of such downtime and expected time until resolution as well as any other information ModMed reasonably requests.

3.3. Communications. The parties will use commercially reasonable efforts to work together to coordinate communications targeted solely to Common Customers.

4. **Fees.**

4.1. Fees. Company will pay ModMed the Fees for all Common Customers who use the APIs during the Term as well as throughout the Continuation Period (i.e., in respect of each so long as it is a Common Customer), regardless of whether they already are customers of Company (as of the Effective Date or as of the date they come to be customers of Company) and regardless of how they come to be customers of Company (including through the efforts of Company or others).

4.2. Payment. Company will pay all Fees in the manner, with the frequency or timing, and with reports or other substantiation as specified in the modmed synapSYS Agreement. Any payment owed by Company to ModMed and not paid to ModMed when due may accrue, at ModMed's discretion, late charges at the rate of one and one-half percent (1.5%) of the outstanding balance per month or at the maximum rate permitted by Law, whichever is lower, from the date such payment was due until the date paid. All payments to ModMed are not refundable. If ModMed provides wiring instructions to Company, Company will pay Fees in that manner until directed otherwise by ModMed.

4.3. Change to Methodology. If in order to comply with applicable Law it is necessary to change the methodology for calculating ModMed's compensation, then ModMed may propose a new methodology that: (i) Company is able to implement within a reasonable time without undue burden and (ii) does not result in an increase in the compensation that Company would pay to ModMed absent such change in methodology. Any such proposal is subject to Company's approval, which approval will not be unreasonably withheld.

4.4. Fair Market Value. Each party agrees that the compensation payable to ModMed under or in connection with the Agreement is consistent with fair market value in an arms' length transaction for the promotion and other activities to be performed by ModMed under the Agreement.

5. **Term and Termination.**

5.1. Term. The Agreement will commence on the Effective Date and continue for the Initial Term. Upon expiration of the Initial Term, the Agreement will automatically renew for Renewal Terms, unless either party delivers to the other party written notice of non-renewal at least 90 days prior to renewal.

5.2. Termination for Material Breach. If a party materially breaches the Agreement, the other party may terminate the Agreement upon a subsequent written notice if the breach has not been cured within 30 days after a first written notice specifying the applicable breach.

5.3. Termination by ModMed. ModMed may terminate the Agreement for convenience upon 90 days' prior written notice to Company.

5.4. Termination For Compliance Reasons. ModMed may terminate the Agreement upon 30 days' written notice if ModMed believes, based on the advice of legal counsel, that any term of the Agreement violates applicable Law, including the federal Anti-Kickback Statute, the Stark Law, the False Claims Act, or the information blocking prohibitions of the 21st Century Cures Act.

5.5. Termination Due to Exclusion, Debarment, or Suspension. ModMed may terminate the Agreement upon written notice to Company if Company or any of Company's owners is excluded from participation in a Federal Health Care Program or otherwise debarred, declared ineligible, suspended, or otherwise sanctioned by any federal or state government procurement or non-procurement program.

5.6. Effect of Termination. Upon termination for any reason of the Agreement and except as necessary for the parties to continue to perform under the Agreement during the Continuation Period: (i) all rights and licenses granted to a party pursuant to the Agreement will automatically terminate and (ii) ModMed's providing ModMed Leads to Company will cease. If the parties had agreed to undertake any promotional or marketing activities, they too will terminate. Otherwise, all other terms and conditions of the Agreement will survive during the Continuation Period. This includes Company continuing to pay all Fees with respect to a Common Customer in accordance with the Agreement during the Continuation Period for so long as such customer continues to be a Common Customer. If the parties agree that Company may continue to use any API(s) after the end of the Continuation Period, Company acknowledges that the API TOU will continue to apply.

5.7. Survival. Any provisions of the Agreement that, by their terms, should survive the termination of the Agreement, will survive, including Sections 4, 5.6, 5.7, 6, 7.2, 8.2, 8.3, and 9 of these modmed synapSYS Terms.

## 6. **Confidentiality.**

6.1. Definition. "**Confidential Information**" means information that: (i) is disclosed in writing or other tangible form and conspicuously marked as being confidential or proprietary or (ii) the Receiving Party knows, or under the circumstances should know, is considered confidential or proprietary by the Furnishing Party.

### 6.2. Exclusions.

6.2.1. General. Confidential Information will not include any information that: (i) at the time disclosed to or obtained by the Receiving Party is generally available in the public domain; (ii) after disclosed to or obtained by the Receiving Party becomes generally available in the

public domain through no fault of the Receiving Party or anyone acting at its direction; (iii) is disclosed without restrictions on use or disclosure to the Receiving Party by a third party who has the right to make such a disclosure; (iv) was rightfully in the Receiving Party's possession prior to the time disclosed to or obtained by the Receiving Party without restrictions on use or disclosure; or (v) is independently developed by the Receiving Party without reference or access to the Furnishing Party's Confidential Information.

6.2.2. PHI. Any PHI of a Common Customer that may be exchanged by the parties in performing under the Agreement will not comprise the Confidential Information of either party under the Agreement; instead, the PHI in each party's possession or control will be subject to that party's Business Associate Agreement with the Common Customer.

6.2.3. Non-PHI Common Customer Data. Confidential Information also does not include non-PHI Common Customer data or information exchanged through the APIs or otherwise in connection with the Agreement. Each party may use such data and information, subject to Section 2.2 and the terms and conditions of such party's applicable customer agreements.

### 6.3. Obligations.

6.3.1. Restrictions on Use and Disclosure. The Receiving Party will: (i) protect and safeguard the confidentiality of the Furnishing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information of a similar nature, but in no event with less than a reasonable degree of care; (ii) not use the Furnishing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to

perform its obligations under the Agreement; and (iii) not disclose the Furnishing Party's Confidential Information to anyone except to the Receiving Party's employees and representatives who have a need to know the Confidential Information in order for the Receiving Party to perform under the Agreement; provided, that each such employee and representative: (A) is informed of the confidential nature of such Confidential Information, (B) is directed by the Receiving Party to treat such Confidential Information as confidential, and (C) is bound by written obligations not to use or disclose the Confidential Information that are no less protective than those in the Agreement (except for advisors who are bound by professional codes of conduct having equivalent effect). The Receiving Party will be liable to the Furnishing Party for any unauthorized use or disclosure of the Furnishing Party's Confidential Information by the Receiving Party's employees and representatives.

6.3.2. Notice. The Receiving Party will promptly advise the Furnishing Party in writing in the event the Receiving Party becomes aware of any actual or suspected unauthorized use or disclosure of the Furnishing Party's Confidential Information by any of the Receiving Party's employees, representatives, or other parties, and will provide such reasonable assistance as the Furnishing Party requests regarding remediation, mitigation, or taking enforcement action (which assistance will be at no charge to Furnishing Party).

6.4. Required Disclosures. If the Receiving Party is requested or required by Law to disclose any of the Furnishing Party's Confidential Information, the Receiving Party, to the extent permitted, will provide the Furnishing Party prompt notice of any such request or requirement so that the Furnishing Party may, at the Furnishing Party's expense, seek a protective order or

other appropriate remedy. The Receiving Party will reasonably cooperate with the Furnishing Party to this end. If a protective order or other remedy cannot be obtained by the Furnishing Party, the Receiving Party may disclose to the appropriate authority only that portion of the Confidential Information that it is required to disclose provided that the Receiving Party uses reasonable efforts to preserve the confidentiality of such Confidential Information. Any information disclosed under this Section 6.4 will continue to be the Furnishing Party's Confidential Information and subject to the provisions of this Section 6 unless and until an exception under Section 6.2 applies to such information.

6.5. Return of Confidential Information. Subject to the rest of this Section 6.5, upon the conclusion of the Continuation Period the Receiving Party will discontinue all use of the Furnishing Party's Confidential Information. Within 30 days after the Furnishing Party's written request, the Receiving Party will either return to the Furnishing Party or destroy, in the Receiving Party's discretion, all of the Furnishing Party's Confidential Information, including all copies in whole or in part and, except to the extent infeasible to do so, any materials that contain any of the Furnishing Party's Confidential Information. The Receiving Party may retain 1 copy of each item of the Furnishing Party's Confidential Information solely for evidentiary purposes. The Receiving Party is not obligated to return or destroy any of the Furnishing Party's Confidential Information subsisting in backups of corporate systems created in the ordinary course of business. The terms and conditions of this Section 6 will continue to apply to any of the Furnishing Party's Confidential Information permitted to be maintained by the Receiving Party in this Section 6.5; provided, that the Receiving Party may not, for any purpose, use or disclose any such Furnishing Party Confidential Information.

6.6. Injunctive Relief. In the event of a breach or threatened breach of the Receiving Party's

confidentiality obligations, the Receiving Party acknowledges that the Furnishing Party will suffer immediate and irreparable harm for which money damages will be inadequate and impossible to calculate and, in addition to any other remedy that may be available at law or in equity, the Furnishing Party will be entitled to seek equitable relief without requirement of posting bond or other security.

6.7. Confidentiality of the Agreement. Neither party to the Agreement will disclose the terms of the Agreement to any third party without the consent of the other party, except as required by securities or other applicable Laws. Each party may disclose the terms of the Agreement: (i) in connection with the requirements of a public offering or securities filing, (ii) in confidence to accountants, banks, and financing sources and their advisors, (iii) in confidence in connection with the enforcement of the Agreement or rights under the Agreement, or (iv) in confidence in connection with a merger or acquisition or proposed merger or acquisition, or the like.

## 7. **Information Security.**

7.1. Security. To the extent Company receives, hosts, stores, creates, transmits, processes, or otherwise possesses or controls any data or information of ModMed, any Common Customers, or both (including PHI, other personally identifiable information, ModMed Confidential Information, or confidential information of Common Customers), Company will implement and maintain then-current industry standard administrative, physical, and technical safeguards and other security measures that are designed to: (i) safeguard the security and confidentiality of such items, (ii) protect against anticipated threats to the security and integrity of such items, and (iii) otherwise prevent unauthorized or unlawful processing, loss, destruction, use, disclosure, or acquisition of or access to any such item.

7.2. Incidents. Company will inform ModMed promptly (which may be orally) of any Security Incident (but in any event within 24 hours after becoming aware of the Security Incident) and share such information as Company possesses at the time. Company will keep ModMed apprised on a recurring basis of Company's investigation, problem identification, and resolution efforts, providing any information reasonably requested by ModMed. Company will notify ModMed in writing once the Security Incident is resolved, including a description of the cause and the steps taken to prevent or mitigate recurrence. Company will cooperate with ModMed and take the actions reasonably requested by ModMed to prevent, remediate, or mitigate any Security Incident. For a Security Incident that is a Security Breach, Company will notify ModMed in writing promptly (but in any event within 3 days after becoming aware) of any Security Breach (regardless whether under such Law Company is obligated to notify ModMed).

## 8. **Compliance.**

8.1. Debarment. Neither party nor any of its owners, employees, agents, or contractors has ever been, and is not currently, suspended, declared ineligible, excluded, sanctioned, debarred from, or otherwise excluded from federal or state government procurement or non-procurement programs, including any exclusion from Federal Health Care Programs by the Office of Inspector General of the U.S. Department of Health and Human Services. Each party will screen its employees, agents, and contractors on a monthly basis against the excluded person list of the Office of Inspector General of the U.S. Department of Health and Human Services, the sam.gov list of sanctioned individuals and entities, and the Office of Foreign Assets Control (OFAC) sanctions lists. Each party will notify the other party if the notifying party or any of its employees, agents, or contractors is sanctioned within 2 business days of learning of the sanction. If this Section 8.1 ceases to be true due to the sanction of a party's employees, agents, or contractors, such party will

immediately remove, or cause to be removed, the sanctioned employees, agents, and contractors from performance under the Agreement and prevent such persons from providing any products and services to Common Customers and from accessing any Common Customer data. For the avoidance of doubt, if either party allows a sanctioned employee, agent, or contractor to provide any products or services to Common Customers or access any Common Customer data in violation of this Section 8.1, such party will be in material breach of the Agreement.

8.2. Investigations. Upon the other party's reasonable request, ModMed and Company will cooperate with any governmental, regulatory body or organization, or similar investigation regarding or relating to the Agreement. Such cooperation will not constitute a waiver by either party of any attorney-client or other privilege.

8.3. Records and Audits. Company will keep accurate records of all transactions relating to the Agreement and will preserve such records during the Record Period. During the Record Period, Company will, upon prior notice from ModMed, provide ModMed and ModMed's representatives with access to Company's premises, records, whether stored in tangible or intangible form, and personnel. Company will fully cooperate with ModMed in connection with such an audit. ModMed and its representatives may audit, interview employees, review and inspect Company's premises and records, and make copies of records, to confirm that Company has been and is in compliance with the terms and conditions of the Agreement, including that Company has paid all amounts due under the Agreement. Any such audit will be at ModMed's expense. If an audit reveals that Company has underpaid ModMed any amounts due under the Agreement: (i) Company will immediately pay ModMed the amount of such underpayment and (ii) if Company has underpaid ModMed by 5% or more of the amounts due for the period covered by the audit, Company will also

immediately reimburse ModMed its costs associated with such audit.

## 9. Miscellaneous.

### 9.1. Notices.

9.1.1. Methods. Unless otherwise expressly set forth in these Terms, any notice required or permitted under the Agreement must be in writing and must be: (i) delivered in person, (ii) sent by certified or registered mail, return receipt requested, or (iii) sent by a nationally-recognized overnight air courier, in each case properly posted and fully prepaid to the appropriate address in the modmed synapSYS Agreement. All notices to ModMed will be to the attention of ModMed's General Counsel.

9.1.2. Notice Date. Notices sent in accordance with Section 9.1.1 will be deemed given: (a) at the time of actual delivery in person as set forth in clause (i) above, (b) 3 business days after deposit in the mail as set forth in clause (ii) above, or (c) 1 business day after delivery to an overnight air courier as set forth in clause (iii) above.

9.1.3. Changes. Either party may change its address for notices by notice to the other party given in accordance with this Section 9.1.

### 9.2. ModMed Affiliates.

9.2.1. Use of Affiliates. ModMed may use ModMed's affiliates to perform and exercise its rights under the Agreement.

9.2.2. Offering of SynAPPs. A ModMed affiliate may offer SynAPPs to its customers and prospects under the terms and conditions of the Agreement (as if such affiliate were ModMed), including Company paying such ModMed affiliate all Fees. In such a case: (i) unless otherwise directed by ModMed, Company will pay all Fees related to such ModMed affiliate

directly to such ModMed affiliate, (ii) each ModMed affiliate will be solely responsible for its performance under the Agreement, (iii) Company must bring all claims arising out of or related to the Agreement solely against such ModMed affiliate and not against ModMed or any other ModMed affiliate, and (iv) any breach by such ModMed affiliate will not be deemed a breach by ModMed or any other ModMed affiliate.

9.3. Assignment. Neither party may assign or delegate the Agreement, in whole or in part, without the other party's prior written consent; provided, that either party may assign the Agreement upon written notice without the other party's consent to an affiliate or in connection with a reorganization. In addition, ModMed may assign the Agreement upon written notice without Company's consent in connection with a merger or sale of all or substantially all of its stock or assets. Any assignment or attempted assignment in violation of this Section 9.3 will be void. The Agreement will bind and inure to the benefit of the parties and their successors and permitted assigns.

9.4. Entire Agreement; Amendment. The Agreement (i.e., the modmed synapSYS Agreement and these modmed synapSYS Terms) constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written understandings and agreements relating to such subject matter. The Agreement may be amended or modified only by a written agreement signed by both parties. The API TOU may be amended as provided in the API TOU.

9.5. Interpretation. Headings used in the Agreement are for convenience only and will not be used in interpreting the Agreement. The Agreement was drafted by both parties and will not be construed against either party. Unless the context

otherwise requires, for purposes of the Agreement: (i) the terms "include," "includes," and "including" are to be construed as inclusive, not exclusive, and are deemed to be followed by the words "without limitation"; (ii) reference to "days" means calendar days, unless specified as "business days"; (iii) references to termination of the Agreement means any expiration or termination of the Agreement; (iv) words used in the singular have a comparable meaning when used in the plural, and vice-versa; (v) references to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, these Terms; and (vi) references to a statute means such statute as amended and includes any successor legislation and any regulations or other Laws promulgated under such statute.

9.6. Insurance. Each party has and will maintain during the Term and during the Continuation Period: (i) worker's compensation insurance with statutory limits and employer's liability coverage with a minimum limit of \$500,000 per occurrence; (ii) automobile liability insurance covering all owned, non-owned, and hired vehicles consistent with statutory limits as may be required by law and with a minimum limit of \$1,000,000 per occurrence; (iii) general liability insurance with a minimum limit of \$5,000,000 per occurrence, which may be met through a combination of primary and excess (umbrella) policy limits; (iv) professional liability insurance with a minimum limit of \$5,000,000 per occurrence; and (v) network and privacy insurance or similar cyber-risk insurance with a minimum limit of \$5,000,000 per claim and \$5,000,000 annual aggregate. Each party will notify promptly the other party of any material change or cancellation of the required insurance coverages. A party will upon request furnish to the other party a certificate of insurance as evidence of the required insurance.

## **EXHIBIT A**

### **Definitions**

**“Agreement”** has the meaning in Section 1.1 of these modmed synapSYS Terms.

**“API”** has the meaning in the API TOU.

**“API Services”** has the meaning in the API TOU.

**“API TOU”** has the meaning in Section 1.2 of these modmed synapSYS Terms.

**“Common Customer”** means a customer of both the ModMed Products and SynAPPs that utilizes the APIs, regardless of whether such customer is a new customer procured by either party or a preexisting customer of either or both parties.

**“Company”** has the meaning given in the modmed synapSYS Agreement.

**“Confidential Information”** has the meaning in Section 6.1 of these modmed synapSYS Terms.

**“Continuation Period”** means the period between the termination of the Agreement for any reason and the date on which the last Common Customer either: (i) ceases to be a customer of both the SynAPPs and ModMed Products or (ii) ceases to use the APIs, whichever comes earlier.

**“Effective Date”** means the effective date specified in the modmed synapSYS Agreement.

**“Federal Health Care Programs”** has the meaning set forth at 42 U.S.C. § 1320a-7b(f).

**“Fees”** means the fees specified in the modmed synapSYS Agreement.

**“Field”** will have the meaning specified in the modmed synapSYS Agreement, if applicable.

**“Furnishing Party”** means the party furnishing Confidential Information to the other party.

**“Initial Term”** means the period beginning upon the Effective Date and continuing for the duration specified on the modmed synapSYS Agreement.

**“Laws”** means any statute, law, regulation, ordinance, rule, code, order, constitution, treaty, common law, judgment, decree, or governmental requirement enacted, promulgated, or imposed by any governmental authority at any level (including municipal, county, province, state, national, or foreign), including HIPAA and other Privacy Laws, health care fraud and abuse laws (e.g., the federal Anti-Kickback Statute, Stark Law, and False Claims Act), and any standards generally adopted by an industry organization (e.g., the Payment Card Industry) that applies to products or services offered to or used by Common Customers (e.g., PCI-DSS). Laws also include all generally accepted accounting principles of the United States, as such principles and standards may be modified during the Term by the Financial Accounting Standards Board or other applicable authorities.

**“ModMed”** has the meaning in the modmed synapSYS Agreement.

**“ModMed Leads”** means existing and prospective customers of ModMed or its affiliates who both: (i) are prospective customers of the SynAPPs and (ii) express interest in one or more SynAPPs.

**“ModMed Products”** means the products and services offered by ModMed or its affiliates specified in the modmed synapSYS Agreement.

**“PHI”** means Protected Health Information as defined in HIPAA.



**“Privacy Laws”** means all Laws regarding information protection, including the privacy, confidentiality, collection, use, handling, processing, security, transfer, or free movement of PHI, Confidential Information, or personally identifiable information, including as applicable the California Consumer Protection Act (CCPA), the General Data Protection Regulation (GDPR), and other similar Laws that may be enacted.

**“Receiving Party”** means the party receiving Confidential Information of the other party.

**“Record Period”** means the period during the Term, the Continuation Period, and for at least 7 years following the termination of the Continuation Period.

**“Renewal Term”** means each 1-year period following what, absent a renewal of the Term, would have been the expiration of the Initial Term.

**“Security Breach”** means a Security Incident that has resulted in the loss or disclosure of Sensitive Data as to which breach notification or other Laws require notifications or other acts, including Privacy Laws.

**“Security Incident”** means a confirmed: (i) circumvention of security controls that may have resulted in the unauthorized access to or control over systems containing Sensitive Data, or (ii) unauthorized access to Sensitive Data.

**“Sensitive Data”** means: (i) the Furnishing Party’s Confidential Information, (ii) PHI, (iii) personally identifiable information of Common Customers or the other party, or (iv) other Common Customer sensitive data.

**“SynAPP”** means a Company product or service specified in the modmed synapSYS Agreement. References in the API TOU to an “App” will be deemed to be to a SynAPP under the Agreement.

**“modmed synapSYS Agreement”** means the modmed synapSYS Agreement executed by ModMed and Company, which incorporates these modmed synapSYS Terms.

**“Term”** means collectively the Initial Term and Renewal Terms.

**“Territory”** means the United States of America, including its territories and possessions.